

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BRIAN BAKER, a Washington resident,

Plaintiff,

vs.

VILLAGE AT BEARDSLEE PHASE I, LLC, a
Delaware limited liability company,

Defendant.

NO.

**COMPLAINT FOR
DECLARATORY
AND INJUNCTIVE RELIEF**

COMES NOW, Plaintiff, Brian Baker, by and through his attorneys, Conrad A. Reynoldson and Michael Terasaki of Washington Civil & Disability Advocate, for his Complaint for Declaratory and Injunctive Relief to state and allege as follows:

I. OVERVIEW

1. The Americans with Disabilities Act (the “ADA”) and the Washington Law Against Discrimination require places of public accommodation to be accessible to people with disabilities.

2. A restaurant is a place of public accommodation within the meaning of Title III of the ADA, 42 U.S.C. §12181(7), and its implementing regulation, 28 C.F.R. §36.104.

1 11. This court has jurisdiction pursuant to 28 U.S.C. §1343(a)(4), which gives district
2 courts jurisdiction over actions to secure civil rights under Acts of Congress.

3 12. This court has jurisdiction pursuant to 28 U.S.C. §1367, which gives district
4 courts supplemental jurisdiction over state law claims.

5 13. Venue is appropriate in this judicial district under 28 U.S.C. §1391 because the
6 practices and procedures that gave rise to the Plaintiff's Complaint for Injunctive Relief and
7 Damages occur in this district and Defendant's Property lies within this district.

8
9 **IV. FACTUAL ALLEGATIONS**

10 14. The ADA was enacted in 1990, "[t]o establish a clear and comprehensive
11 prohibition of discrimination on the basis of disability," and prohibits places of public
12 accommodation from providing separate or unequal benefits and services to individuals with
13 disabilities.

14 15. Defendant's property is one example of countless places of public
15 accommodation that are difficult or dangerous to access due to substantial and numerous
16 compliance issues with the ADA.

17 16. The findings and purpose section of the original ADA, 42 U.S.C. § 12101, states
18 that, "...individuals with disabilities continually encounter various forms of discrimination,
19 including outright intentional exclusion, the discriminatory effects of architectural,
20 transportation, and communication barriers, overprotective rules and policies, failure to make
21 modifications to existing facilities and practices, exclusionary qualification standards and
22 criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or
23 other opportunities..."

1 aisle of 60 inches, or 96 inches wide and served by an access aisle of 96 inches. § 502.2 of the
2 2010 Standards.

3 26. A regular accessible space shall be served by an access aisle at least 60 inches
4 wide. § 502.3.1 of the 2010 Standards.

5 27. The underground accessible parking spaces at Defendant's Property do not have
6 appropriately marked access aisles.

7 28. Large concrete support pillars stand within these accessible parking spaces and
8 the spaces that should constitute access aisles, obstructing the required access aisle space and
9 reducing the width of the parking spaces.

10 The Aboveground Accessible Parking Spaces

11 29. Access aisles must be marked so as to discourage parking and adjoin the
12 accessible route. §§ 502.3 and 502.3.3 of the 2010 Standards.

13 30. § 401 of the 2010 Standards requires an accessible route to business entrances.

14 31. Access aisles at the aboveground accessible parking spaces are striped, but the
15 striping paint has faded.

16 32. Maintenance of accessible features is an integral part of ADA compliance.

17 33. On several occasions in late 2018 and early 2019 the access aisles were obstructed
18 by cars or small golf-cart vehicles thereby preventing anyone parked in the adjacent accessible
19 parking spaces from entering or exiting their vehicle.

20 34. Mr. Baker requires compliant van-accessible parking and compliant accessible
21 routes in order to safely patronize the tenants of Defendant's property using his vehicle and
22 power wheelchair.

Efforts to Resolve Informally

35. While there is no requirement that any efforts be made to informally resolve ADA accessibility issues at a place of public accommodation, Mr. Baker's attorney provided voluntary pre-litigation notice and an opportunity to settle this matter without a lawsuit by letter to Village at Beardslee Phase I, LLC dated January 28, 2019.

36. As of the filing of this complaint, Mr. Baker's attorney received no response contact or response from Village at Beardslee Phase I, LLC.

37. As of the filing of this complaint no alterations have been made to address these accessibility barriers.

38. Defendant's property is not safe and is not welcoming for people who use wheelchairs because it does not comply with the ADA's accessibility laws and regulations.

39. The failure of Village at Beardslee Phase I, LLC to make the property comply with the ADA's accessibility laws and regulations works to exclude people with disabilities from equal access and enjoyment.

V. FIRST CAUSE OF ACTION
Title III of the Americans with Disabilities Act of 1990
42 U.S.C. § 12101 et seq.

40. Mr. Baker incorporates by reference the allegations in the paragraphs above.

41. Mr. Baker is limited in the major life activity of walking and is thus a qualified individual with a disability within the meaning of Title III of the ADA.

42. Title III of the ADA states in relevant part: "No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person

1 who owns, leases (or leases to), or operates a place of public accommodation.” 42 U.S.C. §
2 12182(a).

3 43. Defendant Village at Beardslee Phase I, LLC owns or leases the property where
4 the Starbucks tenant is located.

5 44. The Starbucks location is a restaurant and therefore a place of public
6 accommodation. 42 U.S.C. § 12181(7)(B).

7 45. Defendant has discriminated against Plaintiff on the basis of his disability.

8 46. Defendant’s discriminatory conduct includes but is not limited to:

9 a. Discriminatory exclusion and/or denial of goods, services, facilities,
10 privileges, advantages, accommodations, and/or opportunities;

11 b. Provision of goods, services, facilities, privileges, advantages, and/or
12 accommodations that are not equal to those afforded non-disabled individuals;

13 c. Failing to make reasonable modifications in policies, practices, and/or
14 procedures as necessary to afford the goods, services, facilities, privileges, advantages,
15 and/or accommodations to individuals with disabilities;

16 d. Failing to make alterations in such a manner that, to the maximum extent
17 feasible, the altered portions are readily accessible to and usable by individuals with
18 disabilities, including individuals who use wheelchairs;

19 e. Failing to remove barriers to individuals with disabilities where it would
20 be readily achievable to do so.

21 47. As such, Defendant discriminates and, in the absence of the injunction requested
22 herein, will continue in the future to discriminate against Plaintiff on the basis of disability in the
23 full and equal enjoyment of the goods, services, facilities, privileges, advantages,

1 accommodations and/or opportunities at Defendant's property in violation of Title III of the
2 Americans with Disabilities Act, 42 U.S.C. § 12181 et seq. and/or its implementing regulations.

3 48. Defendant's discriminatory conduct as alleged in this Complaint for Declaratory
4 and Injunctive Relief has harmed Mr. Baker, and the harm continues.

5 49. Defendant's discriminatory conduct as alleged in this Complaint for Declaratory
6 and Injunctive Relief entitles Mr. Baker to declaratory and injunctive relief. 42 U.S.C. § 12188.

7 50. Defendant's discriminatory conduct as alleged in this Complaint for Declaratory
8 and Injunctive Relief entitles Mr. Baker to recover reasonable attorneys' fees and costs incurred
9 in bringing this action. 42 U.S.C. § 12205.

10
11 **VI. SECOND CAUSE OF ACTION**
12 **Violation of the Washington Law Against Discrimination**
(R.C.W. §§ 49.60.010 et seq.)

13 51. Mr. Baker incorporates by reference the allegations in the paragraphs above.

14 52. Mr. Baker is a qualified individual with a disability within the meaning of the
15 Washington Law Against Discrimination.

16 53. Section 49.60.030(1) of the Revised Code of Washington provides in pertinent
17 part: "The right to be free from discrimination because of . . . the presence of any sensory,
18 mental, or physical disability . . . is recognized as and declared to be a civil right. This right shall
19 include, but not be limited to: . . . (b) The right to the full enjoyment of any of the
20 accommodations, advantages, facilities, or privileges of any place of public resort,
21 accommodation, assemblage, or amusement . . ."

22 54. Defendant has violated and continues to violate §§ 49.60.010 *et seq.* of the
23 Revised Code of Washington by violating multiple accessibility requirements under the ADA.

1 55. Defendant's actions constitute discrimination against persons with disabilities and
2 violate the Washington Law Against Discrimination, Revised Code of Washington § 49.60.010
3 et seq., in that persons with mobility disabilities have been and are still denied full and equal
4 enjoyment of the accommodations, advantages, facilities, privileges, and services that Defendant
5 provides to individuals who do not have disabilities.

6 56. As a direct and proximate result of Defendant's discriminatory conduct as alleged
7 in this Complaint for Declaratory and Injunctive Relief, Mr. Baker has suffered and continues to
8 suffer difficulty, hardship, isolation, and segregation due to Defendant's failure to remediate.

9 57. Defendant's discriminatory conduct as alleged in this Complaint for Declaratory
10 and Injunctive Relief has denied Mr. Baker the full and equal enjoyment of services that the
11 Washington Law Against Discrimination requires.

12 58. Mr. Baker has a clear legal right to access the tenants of Defendant's property
13 under the Washington Law Against Discrimination.

14 59. Mr. Baker has the right for Defendant's property to comply with the ADA's
15 accessibility laws and regulations under the Washington Law Against Discrimination.

16 60. Defendant's property does not comply with ADA accessibility laws and
17 regulations.

18 61. Because Defendant's property does not comply with the ADA's accessibility laws
19 and regulations, declaratory and injunctive relief are appropriate remedies under the Washington
20 Law Against Discrimination. *See e.g. Kucera v. Dep't of Transp.*, 140 Wash. 2d 200, 209 (2000).

21 62. Pursuant to RCW § 49.60.030(2), Mr. Baker is entitled to declaratory and
22 injunctive relief and to recover from Defendant his reasonable attorneys' fees and costs incurred
23 in bringing this action.

VII. PRAYER FOR RELIEF

WHEREFORE, Mr. Baker respectfully requests that this Court:

1. Assume jurisdiction over this action;

2. Find and declare Defendant Village at Beardslee Phase I, LLC to be in violation of Title III of the Americans with Disabilities Act, 42 U.S.C. § 12181, et seq. and the Washington Law Against Discrimination, Wash. Rev. Code §§ 49.60.010 et seq. because Defendant's property does not comply with the ADA's accessibility laws and regulations;

3. Issue a permanent injunction ordering Defendant to immediately implement the necessary improvements to bring the Defendant's property into compliance with the ADA's accessibility laws and regulations;

4. Award Mr. Baker reasonable attorneys' fees and costs as authorized by 42 U.S.C. § 12205 and Wash. Rev. Code § 49.60.030(2);

5. Award actual, compensatory, and/or statutory damages to Mr. Baker for violations of his civil rights as allowed under state and federal law;

6. Award such additional or alternative relief as may be just, proper, and equitable.

DATED THIS 3rd day of April, 2019

By:

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